



# Commonwealth of Massachusetts State Ethics Commission

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## CONFLICT OF INTEREST OPINION EC-COI-89-8

### FACTS:

You are a member of the General Court. An immediate family member owns a retail business near a particular site. Although he has closed the business, your family member may be interested in reopening if other businesses are located at the site. Legislation is pending before the General Court which, if enacted, would notwithstanding any general or special law to the contrary, require a specified state agency to relocate its offices to the site. Your family member would likely benefit from the relocation and the resulting consumer patronage should he reopen the business.

### QUESTION:

Does G.L.c. 268A permit you to pursue your co-sponsorship, advocacy or vote on behalf of the legislation?

### ANSWER

No.

### DISCUSSION:

As a member of the General Court, you are a state employee for the purposes of G.L. c. 268A. As a state employee you must abstain from official participation[1] in any particular matter[2] in which a member of your immediate family has a financial interest. The propriety of your continued sponsorship, advocacy, voting and participation in connection with the enactment of the legislation will turn on (1) whether the bill is a particular matter within the meaning of s.1(k) and (2) whether your family member has a financial interest in the enactment of the bill.

#### 1. Particular Matter

Each decision or determination made by a state agency, including the General Court, is a particular matter unless an exemption applies. With respect to the legislative enactment process, the definition of particular matter expressly excludes the enactment of general legislation and implicitly retains the inclusion of special legislation. It has therefore been well-established under Commission and Attorney General precedent that the enactment of special legislation is a particular matter for the purposes of s.1(k). EC-COI-82-169; Attorney General Conflict Opinion No. 578.

The feature which distinguishes special from general legislation is the particularity of the scope and purposes of the act's provisions. See, Sands, 2 Sunderland Statutory Construction s.40.01 et seq. (4th ed., 1973). For example, in EC-COI-85-69, the Commission concluded that proposed comprehensive legislation creating a permanent development bank to provide assistance to all cities, towns and counties as well as to the Commonwealth was general legislation, in light of the permanence and general application of the act's provisions. The Commission reached a similar result in EC-COI-82-153 with respect to a proposed bill permitting the State Racing Commission to conduct off-track betting in those communities which accepted the provisions of the act. As a general rule, legislation which is intended to be permanent, which amends the General Laws, and which establishes rules which are uniformly applicable to all individuals or organizations similarly situated will be regarded as general legislation.

On the other hand, legislation which is temporary, which does not amend the General Laws, and which creates an exception or special rule which does not apply to other similarly situated individuals or organizations will be regarded as special legislation. For example, in EC-COI-85-69, the Commission concluded that a bill increasing the bonding authorization for a state authority and creating an exemption from the existing bond authorization process was a special bill, given the limited scope and purpose of the legislation. Similar results have been reached in EC-COI-80-46 (legislation transferring state-owned land in a municipality), 80-9 (annual budget approval for line item in county budget), 82-175 (home rule legislation affecting the payment by one municipality of retirement supplements to its retired employees). Moreover, legislation which practically affects a single community is regarded as special legislation, even where the act is drafted in more general terms, see, *Belin v. Secretary of the Commonwealth*, 362 Mass. 530, 534-535 (1972) or where it is inserted as a condition restricting the receipt of local aid funds by a particular community. *Mayor of Boston v. Treasurer and Receiver General*, 384 Mass. 718, 722-724 (1981).

Based on these principles, we conclude that the legislation is a special legislation and therefore a particular matter. The bill does not amend the General Laws but instead creates an exception to those laws by providing that its provisions will apply "notwithstanding the provisions of any general or special law to the contrary." More significantly, the practical effect of the bill is to require a particular state agency to relocate its offices to a specific address. The particularity of the state agency and the proposed relocation address make a special bill which, by its purpose and effect, can be distinguished from bills which the Commission has found to be general legislation. See, EC-COI-85-69; 82-153.

## 2. Financial Interest

In order to invoke the abstention requirements of s.6, the particular matter must be one in which your immediate family member has either a direct or reasonably foreseeable financial interest. EC-COI-84-96. Financial interests which are too remote or speculative do not require disqualification under G.L. c. 268A. EC- COI-87-16; 87-1.

We conclude that your family member has a reasonably foreseeable financial interest in the enactment of the legislation. His decision to close the shop was the direct result of the departure from the area of a business which could provide patronage. The viability of his business, whether for the purposes of deciding to reopen or to sell out, is dependent on the existence of a property tenant with employees. The enactment of the bill would increase the number of the shop's potential customers and foreseeably affect the value of his business.

Because your immediate family member has a financial interest in the legislation you must abstain from participation in the legislative consideration of the bill. The prohibition will cover your continued cosponsorship, legislative advocacy and voting in connection with the bill. We are aware of no exemptions under s.6 which are available to you as an elected official and which would permit your participation. EC-COI-82-91.[4]

DATE AUTHORIZED: March 8, 1989

[1] "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, s.1(j).

[2] "Particular matter," any judicial or other proceeding, application, submission request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 265A, s.1(k).

[3] "Immediate family," the employee and his spouse, and their parents, children, brothers and sisters. The father of your spouse is an immediate family member.

[4] This opinion addresses the application of G.L. c. 268A to your prospective activities and does not constitute a review or evaluation of conduct which has already occurred.